



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/798,471

03/11/2004

Kenneth David Harris JR.

033964-110

7419

54945

7590

06/22/2006

NIXON PEABODY LLP  
401 9TH STREET, N.W.  
SUITE 900  
WASHINGTON, DC 20004

EXAMINER

THANH, QUANG D

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,471	<b>Applicant(s)</b> HARRIS ET AL.	
	<b>Examiner</b> Quang D. Thanh	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2006.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-22 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-17 and 19-22 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/27/06</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This office action is responsive to the amendment filed on 3/21/06. As directed by the amendment: claims 1, 8-9, 17 and 19 have been amended; claim 18 has been withdrawn; and new claims 21-22 have been added. Thus, claims 1-17 and 19-22 are presently pending in this application.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Lin (6,077,239). Lin discloses a massager comprising: an elongate handle (fig. 1) having a first end and a second end; a first massage head 12 (fig. 1) disposed at the first end of the handle wherein the first massage head comprises a first upper portion 70 having a first massage head depression 40 with a longitudinal axis substantially parallel to the elongate dimension of the handle (fig. 1), whereby the first massage head depression accommodates one finger of a user placed therein (fig. 4), and a lower portion comprising an active massage area 60 (fig. 1); and a second massage head 11 disposed at the second end of the handle, wherein the second massage head comprises a second upper portion 21 having a second massage head depression 52 with a longitudinal axis substantially parallel to the elongate dimension of the handle

Art Unit: 3764

(fig. 1), and a third massage head depression 50 with a longitudinal axis substantially parallel to the axis of the second massage head depression (fig. 1), whereby the second and third depressions accommodate two fingers of a user placed therein (col. 2, lines 22-24), and a lower portion comprising an active massage area 22 (fig. 1); whereby the second massage head 11 is wider than the first massage head 12 (best seen in fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3,7, 9 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luetngen et al. (6,758,826).

4. Re claims 1,3,7,9, 19 and 21-22, Luetngen et al. discloses a massager unit (fig. 15), comprising: an elongate handle 115 having a first end and a second end (fig. 15); a first massage head disposed at the first end of the handle (fig. 15) ; a first motor 500 (means for vibrating) operatively coupled to the first massage head; a second massage head disposed at the second end of the handle (fig. 15); and a second motor 500 operatively coupled to the second massage head (fig. 13, col. 12, lines 55-60); at least one first weight coupled to the first motor, wherein the first weight is offset from an axis of rotation of the first motor (col. 12, lines 55-60), thereby causing vibrations as the first

Art Unit: 3764

weight rotates, and at least one second weight coupled to the second motor, wherein the second weight is offset from an axis of rotation of the second motor (col. 12, lines 55-60), thereby causing vibrations as the second weight rotates; a power supply 155 (power cord), wherein the power supply is external to the massager unit; wherein the power supply is coupled to alternating current (AC) power (col. 5, lines 38-39).

Luetngen does not explicitly disclose that the first massage head having a shape that is different and wider than the second massage head. However, Luetngen already teaches that each massage head is provided with a variety of tips having different shapes, sizes and material as shown in fig. 10A (tip 1005) and fig. 10B (tip 1010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device, to include one massage head having a tip 1005 and another massage head having a wider tip 1010, as suggested and taught by Luetngen, for the purpose of providing different characteristic of the massage (col. 2, lines 28-32).

5. Re claims 2 and 20, with respect to a first and a second "switch" or "means for controlling" to control each motor, since Luetngen already teaches that "motor controls 150 to operate any vibrating means included in the device" (col. 16, lines 39-40), therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include motor controls such as switches, as suggested and taught by Luetngen, for the purpose of providing means for controlling vibration of each motor.

Art Unit: 3764

6. Claims 1,3,7, 9-16, 19 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng (5,336,159) in view of Luetngen et al.

7. Re claims 1,3,7, 9-16, 19 and 21-22, Cheng discloses a massager unit 1 (fig. 1-2), comprising: an elongate handle 11 having a first end and a second end; a first massage head disposed at the first end of the handle; a first motor (means for vibrating) 22 operatively coupled to the first massage head; a second massage head disposed at the second end of the handle; and a second motor 22 operatively coupled to the second massage head (fig. 1, col. 1, lines 45-55); at least one first weight 23 coupled to the first motor, wherein the first weight is offset (fig. 1) from an axis of rotation of the first motor, thereby causing vibrations as the first weight rotates, and at least one second weight 23 coupled to the second motor, wherein the second weight is offset from an axis of rotation of the second motor, thereby causing vibrations as the second weight rotates; a power supply 6, wherein the power supply is external to the massager unit; wherein the power supply is coupled to alternating current (AC) power (col. 2, lines 20-22); and a switch 111 operable to independently control the first motor and the second motor (col. 2, lines 20-25); wherein an active massage area of the first massage end further comprises a substantially oval-shaped dome (best seen in fig. 2); wherein an active massage area of the first massage end further comprises a plurality of hemispheres 4 (fig. 2); wherein an active massage area of the first massage end further comprises a plurality of conical shapes 4 (fig. 2); wherein the handle has a substantially convex contour to fit a hand of a user (fig. 2); wherein the handle is substantially cylindrical (fig. 2); wherein the handle is substantially rectangular (top view in fig. 3).

Cheng does not disclose that the first massage head having a shape that is different and wider than the second massage head. However, Luetngen discloses a massager having two massage heads disposed at each end of a handle and further teaches that each massage head can be provided with a variety of tips having different shapes, sizes and material as shown in fig. 10A (tip 1005) and fig. 10B (tip 1010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Cheng's device, to select a massage head having a wider tip than the other massage head, as suggested and taught by Luetngen, for the purpose of providing different characteristic of the massage (col. 2, lines 28-32).

8. Claims 1, 3-8, 19 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gow in view of Luetngen et al. Gow discloses a massager unit (fig. 5 and 7), comprising: an elongate handle having a first end and a second end; a first massage head disposed at the first end of the handle (fig. 5 and 7); a second massage head disposed at the second end of the handle (fig. 5 and 7); a first motor operatively coupled to the first massage head; and a second motor operatively coupled to the second massage head; at least one first weight coupled to the first motor wherein the first weight is offset (eccentric weight ) from an axis of rotation of the first motor, thereby causing vibrations as the first weight rotates, and at least one second weight coupled to the second motor, wherein the second weight is offset from an axis of rotation of the second motor, thereby causing vibrations as the second weight rotates (col. 2, lines 50-

Art Unit: 3764

53); a power supply contained within the elongate handle (fig. 3) wherein the power supply is operatively coupled to the first motor and the second motor to provide electrical power to the first motor and the second motor; wherein the power supply is at least one battery (fig. 3, col. 5, lines 3-5); the handle further comprises a cavity constructed and arranged to retain the at least one battery 20 (fig. 3); wherein the power supply is external to the massager unit (fig. 2) and is at least one battery.

Gow does not disclose that the first massage head having a shape that is different and wider than the second massage head. However, Luetngen discloses a massager having two massage heads disposed at each end of a handle and further teaches that each massage head can be provided with a variety of tips having different shapes, sizes and material as shown in fig. 10A (tip 1005) and fig. 10B (tip 1010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Gow's device, to select a massage head having a wider tip than the other massage head, as suggested and taught by Luetngen, for the purpose of providing different characteristic of the massage (col. 2, lines 28-32).

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-17 and 19-22 have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Quang D. Thanh  
Primary Patent Examiner  
Art Unit 3764  
(571) 272-4982



QUANG D. THANH  
PRIMARY EXAMINER